

MEMORANDUM

January 4, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: THOMAS M. TYRRELL, Principal Deputy County Counsel
RICHARD GIRGADO, Deputy County Counsel
Government Services Division

RE: Exxon Mobil Corporation v. County of Los Angeles, et al.
Los Angeles Superior Court Case No. BC350240

DATE OF
INCIDENT: 1999 through 2003

AUTHORITY
REQUESTED: \$267,591.37, plus interest from November 4, 2006, through payment.

COUNTY
DEPARTMENT: Auditor-Controller

CLAIMS BOARD ACTION:

☐ Approve

☐ Disapprove

☒ Recommend to Board of
Supervisors for Approval

- ABSENT -, Chief Administrative Office
ROCKY A. ARMFIELD

, County Counsel
JOHN F. KRATTLI

, Auditor-Controller
MARIA M. OMS

on January 16, 2007

SUMMARY

This is a recommendation to settle the Los Angeles County portion of a lawsuit filed by Exxon Mobil Corporation challenging the County methodology in calculating interest on property tax refunds. The County will pay approximately \$71,000, (26.52% of \$267,591.37, plus interest from November 4, 2006, through payment) with the remainder paid by other taxing entities in the county.

LEGAL PRINCIPLES

Under Revenue and Taxation Code § 5151, interest on refunds is to be calculated at the greater of 3% or the County pool apportioned rate. The County pooled apportioned rate is the net annualized earnings rate for the County Treasurer's pooled idle funds. For purposes of determining the applicable pool rate, the statute looks to June 30 of "the preceding fiscal year for which the refund is calculated."

SUMMARY OF FACTS

In 2004, the County issued property tax refunds to Exxon Mobil for the 1999 through 2003 tax roll years on several parcels. Each refund included interest at the pool rate as of June 2004, the fiscal year preceding the year the refunds were calculated and issued. Exxon Mobil alleges that the pool rate for the fiscal year preceding the roll year of the tax being refunded should be used in making the calculation.

DAMAGES

Exxon Mobil experienced very large property tax adjustments during the relevant years and has claimed that the County's use of an incorrect methodology entitled it to additional interest in the amount of \$365,034.06 on the refunds, plus prejudgment interest of about \$38,717.08, calculated at 7% from the date the County allegedly short-paid the refund. It also seeks attorney's fees, which it claims could exceed \$200,000.

We have persuaded plaintiff's counsel that its underlying refund interest claim is overstated. We dispute the claimed 7% interest rate for prejudgment interest, and believe the attorney's fees claim would be limited by statute to \$7,500 at most.

As a result of discussions, plaintiff has agreed to a reduced amount for the underlying refund interest, will waive its attorney's fees claim and accept prejudgment interest calculated at the applicable County pool rate. Further, plaintiff has agreed to offset the amount to be paid by the County by \$19,704.57, which represents an overpayment of refund interest paid to plaintiff prior to 2004, which was not included in plaintiff's claim, but has been recalculated to be consistent with the methodology used in this settlement recommendation.

We summarize the proposed settlement as follows:

Refund interest due	\$255,618.30	
Prejudgement interest	31,677.64	(through November 3, 2006)
County Overpayment	<u>(-19,704.57)</u>	
Total	\$267,591.37	(plus \$40.08 daily until paid)

Under applicable law, the additional interest on the refund and the prejudgment interest are apportioned among taxing entities, thus, the County General Fund will bear approximately 26.52% of the total settlement.

STATUS OF CASE

The case is set for trial March 19, 2007.

Expenses incurred by the County in defense of the matter are attorney's fees of \$81,767.81 and costs of \$671.88.

EVALUATION

This case of disputed liability turns on an issue of law rather than fact. The statute's use of the term "fiscal year" is susceptible of several interpretations. The "fiscal year" could arguably be the tax roll year (Exxon's interpretation), the year the taxpayer paid the taxes, or the year the County calculated and issued the refund (the County interpretation).

We have researched the legislative history of the statute and found it inconclusive. In addition, plaintiff litigated a similar claim against Kern and Santa Barbara Counties. Plaintiff persuaded a Santa Barbara Superior Court judge of its position, with defendant counties settling based on his tentative ruling. This result is not controlling but is one indication of how a judge could rule in our case.

Since the statute is vague, the issue is likely to resurface. The Auditor-Controller needs a conclusive resolution, but believes the best ultimate strategy will be to seek legislative clarification. The Corrective Action Plan will set forth in greater detail the steps Auditor-Controller will take toward that resolution.

We recommend settlement of this matter for \$267,591.37, plus interest at the rate of \$40.08 per day until paid, the cost to be apportioned to affected taxing entities, including Los Angeles County. The Auditor-Controller concurs in this recommendation.

APPROVED:


ELIZABETH M. CORTEZ
Assistant County Counsel

DEPARTMENT OF AUDITOR-CONTROLLER

CORRECTIVE ACTION PLAN

LAWSUIT OF: Exxon Mobil

INCIDENT DATE: Fiscal Years 1999 through 2003

RISK ISSUE: Claims of miscalculation of statutory interest on refunds

BACKGROUND:

Revenue and Taxation Code § 5151 provides that interest should be paid on refunded property tax payments. Interest is to be calculated at the greater of 3% or the County pool apportioned rate, defined as the treasury pool rate for "the preceding fiscal year for which the refund is calculated.". Los Angeles County has consistently paid interest at the rate earned by its treasury pool in the year preceding the year in which the refund is paid.

The statute's use of the term "fiscal year" is ambiguous. "Fiscal year" could mean the tax roll year, the year the taxpayer paid the taxes, or the year the refund was calculated and issued. If interest rates vary randomly, no method is fiscally preferable.

Approximately 37 counties participate in a statewide Tax Managers forum, which discusses issues of tax calculation methodology and seeks to standardize practice. The tax managers' Manual prescribes calculating interest according to Los Angeles County's refund-issue-date methodology. However, other counties do not uniformly use that approach.

In 2004, Los Angeles County issued property tax refunds to Exxon Mobil for the 1999 through 2003 tax roll years on several parcels. Each refund included interest at the pool rate as of June 2004, the fiscal year preceding the year the refunds were calculated and issued. Exxon Mobil argued that the pool rate for the fiscal year preceding the roll year of the tax being refunded should be used in making the calculation. In 2005, two other counties settled with Exxon Mobil on the same issue after an unfavorable tentative trial court ruling.

POLICY ISSUES:

The Auditor-Controller needs to have the methodology settled, or it will continue to be exposed to the same threat of litigation whenever the calculation-year interest rate is significantly less than the roll-year interest rate. Currently, the county is in a cycle in which the differential is minimal or even positive, but the circumstances which led to the Exxon Mobil claim will inevitably recur. However, we are convinced that legislative

action rather than litigation is the most favorable means to settle the issue and minimize risk to the county.

CORRECTIVE ACTION:

The Auditor-Controller will pursue legislative clarification, including, if possible a saving clause to validate past practice, to settle the issue for it and other counties. In this we expect to work closely with County Counsel and CAO, Intergovernmental Relations.

In December of 2006, Auditor-Controller management met with chief lobbyist Dan Wall to brief the issue. Mr. Wall believed that amending § 5151 as proposed was feasible, but urged that Los Angeles County work with Auditor-Controllers statewide to achieve consensus on the remedial language and the broadest base of support. At the meeting it was confirmed that pursuing this type of legislative correction does not require prior board approval. We hope to move forward with legislation in the 2007 legislative session.